

MUNICIPAL MINIMUM WAGE ORDINANCE FOR CONSTRUCTION

In 2006, through the statewide initiative process, the citizens of Arizona granted municipalities, including “[a] county, city, or town,” the authority to “regulate minimum wages and benefits within its geographic boundaries.”

The following is an example of a proposed Arizona municipal minimum wage ordinance to ensure that **private and public construction work** performed within a municipality is completed safely and by qualified workers.

The minimum wage for any construction professional working within the city limits of the City of _____, on construction projects with a total value greater than _____, shall be the prevailing wage established by the United States Department of Labor for such work within the city limits of the City of _____, as approved and adopted by the _____ City Council at the first council meeting of each calendar year.

An ordinance such as the one above would be practically immune from attack by the Arizona Legislature. In 2013, the Legislature attempted to revoke this authority from Arizona municipalities by passing A.R.S. § 23-204, which provided that only the State may regulate employee benefits, including compensation. Under the Arizona Constitution, such revocation requires a three-fourth’s vote from both houses, which the measure did not receive.

In April of 2015, a coalition of citizens in Flagstaff successfully challenged A.R.S. § 23-204. The challenge resulted in Arizona Attorney General Mark Brnovich entering into a settlement that includes, in part, “A.R.S. § 23-204, to the extent that it operates to prevent political subdivisions from regulating minimum wage, violates the Voter Protection Act.” **Thus, even Arizona’s conservative Attorney General conceded that the Legislature would need 23 Senators and 45 Representatives to revoke a city’s authority to increase the minimum wage.**

Establishing a municipal minimum wage to match the U.S. DOL’s prevailing wage is a win for Arizona construction workers and for Arizonans who can be assured that large construction projects within their cities are completed safely and professionally.

Exhibit 1

Ariz. Rev. Stat. § 23-364

23-364. Enforcement

(Caution: 1998 Prop. 105 applies)

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so.

B. No employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage rate. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least \$250 dollars for a first violation, and at least \$1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages required under this article shall be required to pay the employee the balance of the wages owed, including interest thereon, and an additional amount equal to twice the underpaid wages. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred

fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

Exhibit 2

Settlement in Flagstaff Case

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SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF MARICOPA

THE FLAGSTAFF LIVING WAGE
COALITION, an unincorporated
association; STEVEN LEVIN, a single
person; and, NICOLE MARIE RUIZ, a
single person,

Plaintiffs,

v.

STATE OF ARIZONA, a body politic;
MARK BRNOVICH, Attorney General of
the State of Arizona, in his official
capacity,

Defendants.

No. CV2015-004240

FINAL STIPULATED JUDGMENT

The Court, pursuant to Rule 54, Arizona Rules of Civil Procedure, and A.R.S.

§ 12-1831, having considered the parties' agreement to this Final Stipulated Judgment as evidenced by their respective counsels' signatures below, the Court declares as follows:

1. Plaintiffs in this matter seek to establish a higher local minimum wage in Flagstaff.

2. The Arizona legislature passed A.R.S. § 23-362 in 1997, declaring the regulation of minimum wage to be a matter of statewide concern and barring regulation of minimum wage by political subdivisions.

3. Proposition 202 (2006), entitled the "Raise the Arizona Minimum Wage For Working Arizonan's Act," adopted by the voters of Arizona, and codified in relevant part at A.R.S. section 23-361(I), allows counties, cities and towns in Arizona the right to establish local minimum wages that exceed the state mandated minimum wage. A.R.S. § 23-361(I), as part of a voter-passed initiative, is protected by the Voter Protection Act (1998), Ariz. Const., art. 4, pt. 1, Section 1 (6)(C) and (14).

4. The legislature later passed A.R.S. § 23-204, which prohibits the regulation of employee compensation by cities, towns, and other political subdivisions.

5. A.R.S. § 23-362, passed in 1997, has been impliedly repealed by Proposition 202.

6. A.R.S. § 23-204, to the extent that it operates to prevent political subdivisions from regulating minimum wage, violates the Voter Protection Act.

7. As plaintiffs brought this lawsuit only in order to seek to establish a higher local minimum wage and this lawsuit may be resolved on those grounds, the Court makes no findings regarding any other provision of A.R.S. § 23-204.

8. The State of Arizona will pay \$7,500 in attorney's fees and costs. This resolves all claims to attorney's fees and costs in this matter.

9. Pursuant to Rule 54(c), Arizona Rules of Civil Procedure this is a final judgment disposing of all matters in this action.

DATED: _____

Honorable Roger Brodman
MARICOPA COUNTY SUPERIOR COURT

The undersigned agree to the form and content of this Final Stipulated Judgment.

MIKKEL (MIK) JORDAHL, P.C.

DATED: June 29, 2015. By

/s/ Mikkel Jordahl – State Bar No. 012211
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AIKEN SCHENK HAWKINS & RICCIARDI P.C.

DATED: June 29, 2015. By

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DATED: June 29, 2015. By

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COPY of the foregoing e-filed and lodged with the Clerk of the Court and electronically transmitted this 29th day of June, 2015, to:

Clerk of the Court
Maricopa County Superior Court
201 West Jefferson Street
Phoenix, Arizona 85003-2243

COPY of the foregoing mailed (and electronically transmitted if marked *) this date to:

Rep. David M. Gowan, Sr.
Office of the Speaker
Arizona House of Representatives
1700 W. Washington Street, Suite H
Phoenix, AZ 85007-2844

Sen. Andy Biggs
Office of the President
Arizona State Senate
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/s/ Maureen Riordan
